FILED
JUN 29 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 184

MILTON SHOTTS, PETITIONER,

versus

STATE OF LOUISIANA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

And

BRIEF IN SUPPORT THEREOF.

WARREN O. COLEMAN,
Attorney for Petitioner.

GEORGE P. NOSACKA,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

May It Please the Court:

"A".

Summary Statement of the Matter Involved.

First: Petitioner is the defendant in a certain criminal case filed in the Criminal District Court for the Parish of Orleans, State of Louisiana, wherein the State of Louisiana charged your petitioner, Milton Shotts, in a Bill of Information with violating Act 14 of the Second Extraordinary Session of the State Legislature of 1934, known as the Louisiana State Narcotic Law in that: "on the twenty-first day of August, 1943, within the jurisdiction of the Criminal District Court for the Parish of Orleans, did wilfully and unlawfully possess thirty-four (34)

cigarettes, containing the dried form of the plant known as Marijuana, contrary to the form of the Statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same."

Second: That following his arraignment, and plea of "Not Guilty" entered on October 19, 1943, petitioner was tried by a jury, and a verdict of "Guilty as Charged" was returned on the 27th day of September, 1944.

Third: Petitioner further shows that during the course of the trial, he sought, through counsel, to have the Court exclude the evidence adduced by the State at the trial on the ground: (1) That no search warrant was applied for nor issued to the raiding officers, either by the Federal Commissioner, Mr. Reginald H. Carter, Jr., or any Judge of the Criminal District Court who had competent jurisdiction and power to issue a search warrant; (2) That Section 7 of Article 1 of the State Constitution of Louisiana of 1921 provides that all persons shall be safe and secure in their homes from any unreasonable searches and seizures; (3) That the Fourth and Fifth Amendments to the Federal Constitution specifically provide that no search warrant shall issue except upon probable cause, certified to by credible witnesses, outlining and detailing the alleged grounds for the probable belief that a certain law is being violated; (4) That at no time does the evidence in this proceeding disclose that the evidence so illegally seized and illegally obtained was at any time deposited with the property clerk of the Criminal District Court, which is sacramental, and which, according to Article 615 of Dart's Statutes (also Rule XX, page 14 of the Rules of the Criminal District

Court, effective March 15th, 1943) specifically provides that any evidence seized, to be used by the District Attorney or one of his assistants in any criminal proceeding must be deposited with the property Clerk of the Criminal District Court; (5) That up to the time of the State's offer, the witness testified that the packages contained alleged marijuana cigaretes, but he had not been qualified as a chemist up to now, nor had any chemical analysis been testified to by the witness. Petitioner shows that his Counsel made timely objections to the offer of this evidence but the Court refused to exclude it. The Court erred in permitting this evidence to be introduced and this error was prejudicial to the defendant and constituted reversible error.

Fourth: Petitioner further shows that the verdict of "Guilty as Charged" returned against him was not in fact supported by legally seized and legally obtained evidence and therefore was inadmissible against him and should have been excluded and the Court erred in permitting the State to offer and introduce same for the reason that a rule of evidence should not be allowed for any technical reason to prevail over a defendant's State and Federal constitutional rights.

Fifth: Petitioner further shows that due and proper exceptions to adverse rulings of the Trial Court were taken on his behalf by his Counsel, and together with his Bills of Exceptions and Assignment of Errors, was duly noted, allowed, perfected and filed.

From the verdict of the Jury against petitioner on the 28th day of September, 1944, his Counsel on his behalf

filed a Motion for a New Trial and likewise a Motion in Arrest of Judgment which were overruled by the Trial Judge. A Suspensive Appeal to the Supreme Court of Louisiana was also filed on September 28th, 1944, and allowed by the Trial Judge.

From the verdict and judgment against petitioner said suspensive appeal was taken to the Supreme Court of Louisiana, and all the grounds for complaint alleged in this petition were presented in support thereof.

The said Supreme Court of Louisiana in an opinion and decree rendered on MONDAY, MARCH 26, 1945, affirmed the judgment of the lower Court and the verdict of the Jury.

A rehearing was asked for and refused by the Supreme Court of Louisiana on the 30th day of APRIL, 1945; a petition for a Stay of Execution was filed on the same date and granted for a period of ninety days.

"B".

The Question Presented.

The question involved herein is whether or not evidence illegally obtained and seized can be used against any defendant in a criminal prosecution if relevant to the issue and whether or not evidence, although unconstitutionally obtained, may be used against any person accused of a criminal offense and whether or not a rule of evidence should be allowed for any technical reason to prevail over any of defendant's constitutional rights.

Reasons Relied on for the Allowance of Writ and Specifications of Errors to Be Urged.

(1)

The Supreme Court of Louisiana erred in its opinion and decree in considering the Bills of Exception and the Assignment of Errors, particularly with reference to the exclusion of the evidence against the petitioner which evidence the Trial Judge allowed the State to offer and introduce. Said Court erred further in holding that relevant evidence, although seized without a search warrant, is, nonetheless, admissible in evidence. Said rule of evidence should not be allowed to prevail over the constitutional rights of any person accused of a criminal offense.

(2)

The opinion and decree of the Supreme Court of Louisiana and the Verdict of the Jury and the Judgment of the Trial Judge of the Criminal District Court for the State of Louisiana in this case is in direct conflict with the FOURTH, FIFTH and FOURTEENTH AMENDMENTS of the Constitution of the United States of America which guarantee to your petitioner a trial by due process of law. The admission of illegal evidence by the trial Judge over the objection of petitioner's Counsel, and the failure of said trial Judge to exclude same, in effect deprives him of his right to due process of law, as guaranteed him under the Constitution of the United States, and likewise deprives him of an orderly trial.

WHEREFORE, your petitioner prays that a WRIT OF CERTIORARI be issued out of and under the seal

of this Honorable Court, directed to the SUPREME COURT OF LOUISIANA, commanding that COURT to certify and to send to this COURT for its review and determination on a day certain to be named a full and complete transcript of the records and all of the proceedings in the case numbered and entitled on its docket, NO. 37,735, STATE OF LOUISIANA, Plaintiff and Appellee, versus MILTON SHOTTS, Defendant and Appellant, and that said opinion and decree of the SUPREME COURT OF LOUISIANA may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper; and your petitioner will ever pray.

Respectfully submitted,

MILTON SHOTTS,
Petitioner;

By WARREN O. COLEMAN,
Attorney for Petitioner.

GEORGE P. NOSACKA,
Of Counsel.